



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of double the amount of the security deposit and compensation for damage or loss, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed the tenancy began on February 1, 2007 as a 1 year fixed term tenancy that converted to a month to month tenancy on February 1, 2008 for a monthly rent at the end of the tenancy of \$470.00 due on the 1<sup>st</sup> of each month and that a security deposit of \$225.00 was paid on or before February 1, 2007.

The parties also agree the tenancy ended on or before November 30, 2010; that the tenant provided her forwarding address no later than December 7, 2010 in writing; and that the landlord provided the tenant with a cheque dated December 13, 2010 in the amount of \$183.37 that was later replaced with a new cheque on December 20, 2010 and that both cheques were returned by the tenant to the landlord and not negotiated.

The landlord's agent testified that they determined the amount to be returned by 1<sup>st</sup> adding the amount of interest owed determined by using the Deposit Interest Calculator on the Residential Tenancy Branch website in the amount of \$6.52; deducting \$40.32 for the tenant's withholding of this amount from her November 2010 rent payment; and deducting the amount of \$7.83 for the replacement of a stove ring.

The tenant testified that she did not include the \$40.32 in the rent as this was the amount it cost her to rent a mailbox to have her mail sent to when the previous landlord took away her mailbox key in September 2010 and that she had told her previous landlord she would be withholding from future rental payments. The tenant provided nothing in writing confirming a rental reduction.

### Analysis

Section 38(1) of the *Act* stipulates the landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing, either return the security deposit less any mutually agreed upon deductions or file an Application for Dispute Resolution seeking to claim against the security deposit.

Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit. Despite the landlord's attempts to return some of the security deposit, without the tenant's agreement for any deductions, I find the landlord has failed to comply with Section 38(1).

As the landlord failed to obtain written consent from the tenant to withhold any amounts from the security deposit and in the absence of an Application for Dispute Resolution from the landlord to claim for monies owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, I find the landlord is not, at this time, entitled to retain any amounts from the security deposit. The landlord remains at liberty to file his own Application for any claims he may have against the tenant.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$456.52** comprised of \$450 double the security deposit and the \$6.52 interest on the security deposit held for the duration of the tenancy.

This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 22, 2011.

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Residential Tenancy Branch